

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION – DETROIT**

IN THE MATTER OF:

Joseph G. DuMouchelle, and
Melinda J. Adducci

Debtors.

Bankruptcy Case No. 19-54531
Honorable Phillip J. Shefferly
Chapter 7

**MOTION FOR ENTRY OF ORDER GRANTING AUTHORITY TO ISSUE
SUBPOENAS FOR THE PRODUCTION OF DOCUMENTS AND THE
EXAMINATION OF WITNESSES**

NOW COMES Fred J. Dery, Chapter 7 Trustee (the “Trustee”), by and through his counsel Stevenson & Bullock, P.L.C., and files this Motion for Entry of Order Granting Authority to Issues Subpoenas for the Production of Documents and the Examination of Witnesses (the “Motion”) and requests that this Court enter an order substantially in the form attached hereto as Exhibit 1.

Trustee, through his counsel, in support of his Motion, states:

JURISDICTION

1. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b). This is a core proceeding pursuant to 28 U.S.C. § 157(b).
2. Venue is proper under 28 U.S.C. § 1408 and 1409.
3. Trustee brings this Motion pursuant to 11 U.S.C. §§ 105, E.D. Mich. LBR 9014-1, and Rule 1019(6) of the Federal Rules of Bankruptcy Procedure.

FACTS & PROCEDURAL BACKGROUND

4. On October 11, 2019 (the “Petition Date”), the debtors, Joseph G. DuMouchelle, and Melinda J. Adducci (collectively, the “Debtors”), filed a voluntary petition for relief under Chapter 11 of Title 11, United States Code (the “Bankruptcy Code”).

5. On December 4, 2019, the bankruptcy case was converted to one under Chapter 7 of the Bankruptcy Code pursuant to the *Order Converting Case to Chapter 7* (the “Conversion Order”) [Docket No. 57].

6. The Trustee is the duly qualified and permanent trustee in this Chapter 7 case and over the bankruptcy estate (the “Estate” or “Bankruptcy Estate”).

RELIEF REQUESTED

7. By this Motion, the Trustee seeks an order, substantially in the form attached hereto as Exhibit 1, authorizing the Trustee to seek documents and oral examinations pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure without further order of this Court. This Motion is appropriate and reasonable to assist the Trustee in his investigation into the Debtors’ assets, liabilities, and financial affairs.

LEGAL AUTHORITY

8. Pursuant to 11 U.S.C. §105, the Court has broad power to, “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.”

9. Pursuant to Federal Rule of Bankruptcy Procedure 2004, the Court may order the examination of any entity or person on motion filed by any party in interest. The examination may relate to the acts, conduct, or property, or to the liabilities and financial condition of the Debtor, or to any matter which may affect the administration of the Estate. Furthermore, pursuant to Federal Rule of Bankruptcy Procedure 2004, the attendance of a person or entity for examination and for the production of documents may be compelled as provided in Federal Rule of Bankruptcy Procedure 9016.

10. Courts recognize that the scope of a Rule 2004 examination is broad. Indeed, some courts have compared it to a “fishing expedition.” *In re Hammond*, 140 B.R. 197, 201 (Bankr. S.D. Ohio 1992); *In re Russell*, 392 B.R. 315, 359 (Bankr. E.D. Tenn. 2008) (“A Rule 2004 examination is a legally authorized fishing expedition. It is not a deposition subject to all the procedural rules governing discovery in a contested matter or adversary proceeding.”). “Although the primary purpose of a Rule 2004 examination is to permit a party in interest to quickly ascertain the extent and location of the estate’s assets, such examination is

not limited to the debtor or his agents, but may properly extend to creditors and third parties who have had dealings with the debtor.” *In re Fearn*, 96 B.R. 135, 138 (Bankr. S.D. Ohio 1989).

11. Good cause exists to issue Bankruptcy Rule 2004 examinations and enter the relief requested in this Motion. Although the Trustee hopes and intends to conduct his investigation largely through the voluntary cooperation of witnesses and entities, the Trustee anticipates that absent the ability to issue subpoenas, filing a separate motion for each Bankruptcy Rule 2004 examination would rapidly become burdensome. Specifically, (i) the large number of potential financial institutions, corporate interests, and parties in interest either held by the Debtors or with whom the Debtors engaged with their financial affairs, suggests that a large number of Bankruptcy Rule 2004 examinations may be necessary; (ii) any delay in seeking such examinations could lead to dissipation of recoverable assets, evidence, or information; and (iii) the filing of numerous Bankruptcy Rule 2004 motions with the Court would unnecessarily burden the Court and Trustee and would generate additional administrative costs to the Estate.

12. The requested subpoena powers are critical to the Trustee’s ability to fulfill his fiduciary duties under the Bankruptcy Code and are in the best interest of the Debtors’ creditors and the efficient liquidation and administration of the Bankruptcy Estate.

Bankruptcy Rule 2004 Subpoena Procedures

13. The Trustee seeks entry of an order streamlining the Bankruptcy Rule 2004 discovery process by implementing the following procedures:

- a. The Trustee will be authorized to issue and serve subpoenas (individually, a “Rule 2004 Subpoena”) for examination and the production of documents pursuant to Bankruptcy Rule 2004 without further order of the Court;
- b. The Trustee shall serve each Rule 2004 Subpoena and a copy of the order entered pursuant to this Motion on the target of the Rule 2004 Subpoena;
- c. The Trustee shall file with the Court a certificate of service for each Rule 2004 Subpoena served;
- d. Targets of a Rule 2004 Subpoena and any party in interest will have 14 days after any Rule 2004 Subpoena is served to object to and/or seek to quash such Rule 2004 Subpoena;
- e. Targets of a Rule 2004 Subpoena will be directed to produce, on a rolling basis, all responsive documents within 14 days of the service of the subpoena (unless otherwise agreed by the Trustee), subject to any documents withheld under a claim of privilege;
- f. If a witness withholds any documents based upon a claim of privilege, the witness will be obligated to provide counsel for the Trustee a privilege log containing the information required under Fed. R. Bankr. P. 7026(b)(5) within 14 days of the service of a Rule 2004 Subpoena upon that witness (unless otherwise agreed by the Trustee); and
- g. Persons on whom a Rule 2004 Subpoena is served are directed to submit to oral examination upon reasonable notice and, absent other agreement with the Trustee, in no event more than 21 days from the service of a subpoena calling for such testimony.

14. This process has been approved by courts in this district and courts in other districts to streamline the trustee's investigation of third parties that may have an effect on the administration of a debtor's estates. See *In re Richard Martin Lewiston*, Case No. 12-58599-pjs [Docket No. 141]; *In re MuniVest Services, LLC*, et al, Case No. 10- 71403-pjs [Docket No. 29]; *In re Kevin G. Carney*, Case No. 09-18053 [Docket No. 65] (Bankr. N.D. Illinois, March 2, 2010); and *Securities Investor Protection Corporation v. Bernard L. Madoff Investment Securities LLC*, Adversary Proceeding No. 08-01789-BRL [Docket No. 31] (Bankr. S.D.N.Y., January 12, 2009).

15. The proposed process will enable the Trustee to engage in the necessary discovery immediately and move quickly as his investigation unfolds. Thus, the requested relief would minimize costs to the Estate, allow the Trustee to conduct an efficient investigation, and potentially minimize any dissipation of assets. Nothing in the Motion or the proposed order granting the Motion limits the rights of any witness or other party under applicable law to object to or oppose any Rule 2004 Subpoena the Trustee may serve upon such witness.

CONCLUSION

WHEREFORE, Trustee requests that this Honorable Court enter the proposed Order attached hereto as Exhibit 1 and grant such other and further relief as this Honorable Court deems just and proper.

Respectfully submitted,
STEVENSON & BULLOCK, P.L.C.

By: /s/ Elliot G. Crowder
Elliot G. Crowder (P76137)
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26100 American Drive, Ste. 500
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Email: ecrowder@sbplclaw.com

Dated: February 13, 2020

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION – DETROIT**

IN THE MATTER OF:

Joseph G. DuMouchelle, and
Melinda J. Adducci

Debtors.

Bankruptcy Case No. 19-54531
Honorable Phillip J. Shefferly
Chapter 7

**ORDER GRANTING AUTHORITY TO ISSUE SUBPOENAS FOR THE
PRODUCTION OF DOCUMENTS AND THE EXAMINATION OF
WITNESSES**

THIS MATTER having come before the Court upon the Chapter 7 Trustee's Motion for Entry of Order Granting Authority to Issues Subpoenas for the Production of Documents and the Examination of Witnesses (the "Motion")¹; no timely objections having been filed and properly served, or if timely filed and properly served, having been overruled; notice of the Motion having been sufficient and appropriate; and the Court being otherwise fully advised in the premises;

NOW THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

1. The Motion is granted.
2. The Trustee is authorized to issue and serve Rule 2004 Subpoenas for examinations pursuant to Bankruptcy Rule 2004 without further order of the Court.

¹ Capitalized terms as used herein shall have the same meanings as prescribed to them in the Motion, unless otherwise provided herein.

3. The Trustee shall serve each Rule 2004 Subpoena and copy of this Order on the target of the Rule 2004 Subpoena.

4. The Trustee shall file with the Court a certificate of service for each Rule 2004 Subpoena he serves.

5. Recipients of a Rule 2004 Subpoena and any party in interest will have 14 days after any Rule 2004 Subpoena is served to object to and/or seek to quash such Rule 2004 Subpoena.

6. The Trustee shall include on the face of any Rule 2004 Subpoena that he issues the following language in bold, underlined font: **Recipients of a Rule 2004 Subpoena and any party in interest shall have 14 days after the date of service to object to and/or seek to quash such Rule 2004 Subpoena.**

7. Recipients of a Rule 2004 Subpoena are directed to produce, on a rolling basis, all responsive documents within 14 days of the service of the subpoena (unless otherwise agreed by the Trustee), subject to any documents withheld under a claim of privilege.

8. If a witness withholds any documents based upon a claim of privilege, the witness is obligated to provide counsel for the Trustee a privilege log containing the information required under Fed. R. Bankr. P. 7026(b)(5) within 14 days of the service of a Rule 2004 Subpoena upon that witness (unless otherwise agreed by the Trustee).

9. Recipients of a Rule 2004 Subpoena are directed to submit to oral examination upon reasonable notice and, absent other agreement with the Trustee, in no event more than 21 days from the service of a deposition subpoena upon the recipient of said subpoena.

10. This Court retains jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION – DETROIT**

IN THE MATTER OF:

Joseph G. DuMouchelle, and
Melinda J. Adducci

Debtors.

Bankruptcy Case No. 19-54531
Honorable Phillip J. Shefferly
Chapter 7

**NOTICE AND OPPORTUNITY TO OBJECT TO MOTION FOR ENTRY
OF ORDER GRANTING AUTHORITY TO ISSUES SUBPOENAS FOR
THE PRODUCTION OF DOCUMENTS AND THE EXAMINATION OF
WITNESSES**

PLEASE TAKE NOTICE that Trustee, Fred J. Dery, by and through his counsel, Stevenson & Bullock, P.L.C., has filed a Motion for Entry of Order Granting Authority to Issues Subpoenas for the Production of Documents and the Examination of Witnesses (the “Motion”).

Your rights may be affected. You may wish to review the Motion and discuss it with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you wish to object to the Court granting the relief sought in the Motion, or if you want the Court to otherwise consider your views on the Motion, within fourteen (14) days of service of the Motion, or such shorter time as the Court may hereafter order, you or your attorney must:

1. File with the Court a written response or an answer², explaining your position at:

United States Bankruptcy Court
211 West Fort Street
Detroit, Michigan 48226

If you mail your response to the Court for filing, you must mail it early enough so the Court will receive it on or before the date stated above.

² Response or answer must comply with FED.R.CIV.P. 8(b), (c), and (e).

You must also mail a copy to:

Stevenson & Bullock, P.L.C.
Attn.: Elliot G. Crowder
26100 American Drive, Suite 500
Southfield, Michigan 48034

-and-

Office of the United States Trustee
211 West Fort Street, Suite 700
Detroit, Michigan 48226

If a response or answer is timely filed and served, the clerk may schedule a hearing on the Motion and you will be served with a notice of the date, time, and location of the hearing.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Motion and may enter an Order granting the relief sought therein.

Respectfully submitted,
STEVENSON & BULLOCK, P.L.C.

By: /s/ Elliot G. Crowder
Elliot G. Crowder (P76137)
Counsel for Trustee
26100 American Drive, Suite 500
Southfield, MI 48034
Phone: (248) 354-7906
Facsimile: (248) 354-7907
Email: ecrowder@sbplclaw.com

Dated: February 13, 2020

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION – DETROIT**

IN THE MATTER OF:

Joseph G. DuMouchelle, and
Melinda J. Adducci

Debtors.

Bankruptcy Case No. 19-54531
Honorable Phillip J. Shefferly
Chapter 7

CERTIFICATE OF SERVICE

Elliot Crowder certifies that on February 13, 2020 a copy of the **Motion for Entry of Order Granting Authority to Issues Subpoenas for the Production of Documents and the Examination of Witnesses, proposed Order, Notice, and Certificate of Service** was served upon the following parties via the Court's CM/ECF (PACER) system, and/or by United States Postal Service First Class Mail:

Office of the United States Trustee	Joseph G. DuMouchelle Melinda J. Adducci 1221 Bowers, #2595 Birmingham, MI 48012
Fred Dery fdery@fredjdery.com MI39@ecfcbis.com dcloven@fredjdery.com fjd@trustesolutions.net	Robert N. Bassel rbassel@gmail.com robertbassel@hotmail.com ecfbassel@gmail.com
Leslie K. Berg (UST) Leslie.K.Berg@usdoj.gov	Howard M. Borin hborin@schaferandweiner.com jburns@schaferandweiner.com nmack@schaferandweiner.com
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Glenn S. Walter gwalter@honigman.com	Daniel J. Weiner dweiner@schaferandweiner.com
Jay L. Welford jwelford@jaffelaw.com	All other ECF participants

Elliot Crowder further certifies that on February 13, 2020 a copy of the **Notice** was served by depositing same in a United States Postal Box located in Southfield, Michigan, with postage fully prepaid thereon on all parties appearing on Debtors' matrix obtained from the Court's CM/ECF website on February 13, 2020 and attached hereto.

Respectfully submitted,
STEVENSON & BULLOCK, P.L.C.

By: /s/ Elliot G. Crowder
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Dated: February 13, 2020

Label Matrix for local noticing
0645-2
Case 19-54531-pjs
Eastern District of Michigan
Detroit
Thu Feb 13 15:01:01 EST 2020

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Detroit, MI 48226-3506

Ally Bank
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Saint Paul, MN 55113-0004

American Express National Bank
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Fort Worth, TX 76161-0278

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#2595
Birmingham, MI 48012-7102

American Express
Customer Care / Bankruptcy
P.O. Box 297812
Fort Lauderdale, FL 33329-7812

Leslie K. Berg (UST)
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Detroit, MI 48226-3263

Chase
P. O. Box 15298
Wilmington, DE 19850-5298

Credibly
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STE 350
Southfield, MI 48033-7416

Department Stores National Bank (Macy's
Bankruptcy Processing
P.O. Box 8053
Mason, OH 45040-8053

Discover Bank
Discover Products Inc
Po Box 3025
New Albany OH 43054-3025

East Continental Gems
c/o Cindy Elizabeth Molloy, Esq.
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Oakland County Circuit Court
1200 N. Telegraph Road
Pontiac, MI 48341-0404

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Ohio/Michigan Regional Office
211 West Fort Street
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Detroit, Michigan 48226-3263
Attn: Quarterly Fee Coordinator

PRA Receivables Management, LLC
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Norfolk, VA 23541-1021

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Synchrony Bank (Lowe's)
Bankruptcy Department
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Orlando, FL 32896-5060

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(p)US BANK
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Verizon
by American InfoSource as agent
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Jay L. Welford
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Suite 2500
Southfield, MI 48034-8214

William Noble Rare Jewels, LP
100 Highland Park Village
Dallas, TX 75205-2784

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified
by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g) (4).

US Bank
P.O. Box 5229
Cincinnati, OH 45201-5229

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)Joy Augustine

(u)Jonathan Birnbach

(u)Charles D. Bullock

(u)Finemark National Bank & Trust

(u)Teodor Gelov

(u)J.B. International

(u)John Ragard

(u)Marty Harvity

(u)Aaron Mendelsohn

(du)John Ragard

(u)Thomas Ritter

(u)Sanibel Captiva Community Bank

(u)Santander Consumer USA, Inc.

(u)Mark Shapiro

(u)Thomas Ritter
c/o Attorneys - Bryan Marcus P47125

(u)Andrew R. Vara

End of Label Matrix	
Mailable recipients	67
Bypassed recipients	16
Total	83